



July 2, 2002

Mr. Harold Willard  
Police Legal Advisor  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2002-3582

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165051.

The Lubbock Police Department (the “department”) received a request for “all accident reports, incidents reports [sic], offense report, statements, written interviews, field sketches, officer field notes, measurements, diagrams, notes, witnesses names and addresses, photographs, audio tapes, video tapes, reports, supplements and any other information obtained or developed” regarding a particular traffic accident. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a “Texas Peace Officer’s Accident Report.” Section 550.065(b) of the Transportation Code states that it “applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]” This section states that, except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4) (codifying Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has provided the department with two of the three pieces

of information. Thus, you must release the submitted "Texas Peace Officer's Accident Report" to the requestor.

As for the remainder of the submitted information, we note that it consists of a completed investigation made of, for, or by the department and is made expressly public under section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The only exception to disclosure that you claim is section 552.103. This section, which excepts from disclosure information relating to pending and reasonably anticipated litigation, is a discretionary exception that protects the governmental body's interests and may be waived. As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived). Accordingly, none of the submitted information may be withheld on the basis of section 552.103.

We note, however, that portions of the submitted information are excepted from disclosure under section 552.117(2). One of the individuals involved in this accident is a Lubbock police officer. Section 552.117(2) provides that information that relates to the home address, home telephone number, social security number, or family member information of a peace officer as defined in article 2.12 of the Texas Code of Criminal Procedure must be withheld regardless of whether the officer made an election under section 552.024 of the Government Code to keep such information confidential. The department must therefore withhold the information we have marked that would reveal this officer's home address, home telephone number, social security number, and family member information. *See also* Open Records Decision No. 670 (2001) (providing that governmental bodies may withhold information under section 552.117(2) without requesting decision from this office).

Also, the submitted videotape and photographs contain information that is subject to section 552.119 of the Government Code. Section 552.119 excepts from public disclosure "[a] photograph that depicts a peace officer" that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information, (2) the officer is a party in a fire or police civil service hearing or a case in arbitration, or (3) the

photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted videotape and photographs depict peace officers, and it does not appear that any of the exceptions are applicable. Unless the depicted officers have executed written consents to disclosure, the department must withhold the photographs that depict peace officers, which we have marked. In addition, you must redact the peace officers' likenesses from the videotape. The remaining photographs and the remainder of the videotape are not protected under section 552.119 and may not be withheld.

Finally, the submitted records include motor vehicle record information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Pursuant to section 552.130, you must redact the information that relates to Texas drivers license and license plate numbers from the submitted documents and the Texas license plate numbers from the submitted photographs and videotape.

In summary, the department must withhold the information that we have marked as being excepted under sections 552.117(2). All Texas motor vehicle record information must be redacted under section 552.130. Under section 552.119, you must withhold the photographs and portions of the videotape that depict peace officers. All other information must be released.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

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<sup>1</sup>We note, however, that, if the department does not maintain the technological capability to redact information from the submitted videotape, you must withhold the videotape in its entirety.

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

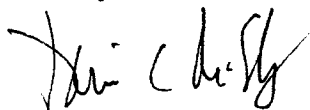
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 165051

Enc. Marked documents

c: Ms. Gracie Hurtado  
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(w/o enclosures)